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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1965.

WOODROW WILSON COMPTON,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit.

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PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Woodrow Wilson Compton, prays that a writ of certiorari issue to review an order and judgment entered by the Court of Appeals for the Sixth Circuit on February 4, 1966, and the court having denied the petition for a rehearing on March 10, 1966. Said order and judgment affirmed a judgment under which petitioner was convicted and sentenced in the United States District Court for the Western District of Tennessee to serve a sentence of five years in the penitentiary and required to pay a fine of $5,000 for an alleged violation of the provisions of Title

18, Section 1952 of the United States Code, for traveling in interstate commerce with the intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment or carrying on of an unlawful activity, to-wit, a business enterprise involving gambling.

OPINIONS BELOW.

The District Court wrote no opinion. The Court of Appeals filed an opinion confirming the conviction of the lower court and thereafter filed a short order overruling petitioner's petition to rehear. Neither the opinion affirming the conviction rendered in the lower court nor the order overruling the petition to rehear have yet been reported but each may be found as an appendix to this petition.

JURISDICTION.

The judgment of the Court of Appeals was entered on February 4, 1966, and the petition to rehear was overruled on March 10, 1966. Thereafter an order was entered staying the mandate of the Court pending the filing of this petition. The jurisdiction of this Court is invoked under the provisions of Title 28, Section 1254, paragraph (1) of the United States Code.

QUESTION PRESENTED.

The sole question presented for review by this petition is:

1. Is a citizen who moves his legal residence from one state to another and who does not thereafter travel in interstate commerce guilty of a violation of 18 U. S. C. 1952 if at a later date he commences a gambling operation in the state of his new domicile, where there is some evidence to show that he expected to open a gambling house at the time he changed his domicile?

STATUTE INVOLVED.

The petitioner was convicted for the alleged violation of the provisions of Title 18, Section 1952, of the United States Code, which provides as follows:

> "Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—
>
> "(1) distribute the proceeds of any unlawful activity; or
>
> "(2) commit any crime of violence to further any unlawful activity; or
>
> "(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,
>
> and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.
>
> "(b) As used in this section 'unlawful activity' means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics, or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.
>
> "(c) Investigations of violations under this section involving liquor or narcotics shall be conducted under the supervision of the Secretary of the Treasury."

STATEMENT OF THE CASE.

The facts in the case at bar to the extent that they are material in disposing of the question presented by this petition for certiorari are practically undisputed. The opinion of the Court of Appeals except for one erroneous statement* fairly well sets out all of the material facts.

---

* On page 2 of the opinion of the Court of Appeals (Appendix, p. 18) the following statement is made:

"On September 11, 1962, one Norris Nix, a friend and gambling associate of Defendant, purchased a farm consisting of 45 acres, including a six-room dwelling in Tipton County, Tennessee, for $27,000. The attorney who handled the transaction testified that Defendant was present when the transaction was closed, although he was unable to identify Defendant at the trial."

Actually the attorney in question testified as follows:

"Q. I believe you appear as the Notary for signature?
"A. Yes, although I have no independent recollection of taking it, it is on the record, and I did.
"Q. Where was that deed prepared, in your office?
"A. In my office, yes.
"Q. Did all the parties appear there for the closing of the deal?
"A. To the best of my—well, I have very little independent recollection of the transaction. There was Mr. and Mrs. McMillan, Norris Nix, and a man who was introduced to me as Mr. Compton.
"Q. W. W. Compton?
"A. I have forgotten, now, what his initials were.
"Q. Would you recognize him?
"A. That was the first time I had ever seen Mr. Compton, and I wouldn't swear positively that the gentleman sitting there was the man sitting in my office, but he was introduced to me as Compton."

Testimony of Mr. John H. Tipton (R. 43a).

The petitioner, Mr. Woodrow Wilson Compton, testified but was not asked by either his own counsel on direct examination or by the Government on cross-examination whether he was present on this occasion or not. Further, there are two Messrs. Compton in the record. Mr. Henry Compton, a brother of the petitioner, was shown to have owned a 10% interest in the Tennessee gambling establishment.

Woodrow Wilson Compton (R. 110a, 130a).

Woodrow Wilson Compton was a native of Arkansas, but moved to Memphis sometime in the 1940's where he was employed by the E. L. Bruce Lumber Company (R. 83a).

In 1948 he moved to West Memphis, Arkansas, where he operated a sporting goods store, and along with his wife opened a beauty shop. In addition to these two businesses Mr. Compton gambled in his home located at 3601 Beatty Street in West Memphis; specifically he ran a crap or dice game (R. 84a-85a).

In May, 1962, the local authorities raided Mr. Compton's West Memphis home, confiscated and destroyed all of his gambling equipment. This action on the part of the Arkansas police received wide publicity in the neighborhood in which he lived, much to the embarrassment of his family, consisting of his wife and one small son. For this reason sometime shortly after his home was raided Mr. Compton decided to move himself and his family to Memphis, Tennessee (R. 85a-87a; 173a).

In late August or early September, 1962, Mr. and Mrs. Compton looked at a house on Maritavia Street in Memphis with the view of purchasing it as a home. On September 24, 1962, they entered into a contract to purchase this property from its then owners, Mr. and Mrs. Sam Vires, but after the contract had been signed the sellers changed their minds about selling and declined to go through with the sale (R. 89a, 141a, 168a).

Sometime before moving to Tennessee Mr. Compton became concerned about whether a move to Tennessee might be in violation of the Federal law since he had previously been a gambler in the State of Arkansas and, it is perhaps fair to state, that he might sometime after his move to Tennessee engage in that business in the state of his new domicile. He, therefore, contacted his attorney, Mr.

E. J. Butler of Forrest City, Arkansas, and was advised after his attorney had made a study of Public Law 87-228 and the report of the judiciary committee, that if he became a bona fide resident of Tennessee he would not be in violation of the Federal laws (R. 111a-113a, 139a).

On September 30, 1962, Mr. Compton leased a house located on Argonne Street in Memphis, Tennessee, from a Navy man. He leased his house in West Memphis, Arkansas, to Mr. and Mrs. Floyd Graham, and on October 2, 1962, moved his residence from West Memphis, Arkansas, to the house he had leased on Argonne Street in Memphis (R. 90a-92a).

One day later, on October 3, 1962, the petitioner entered into negotiations with a Mr. Nix for the purchase of certain property in Tipton County (R. 134a). On that day according to the petitioner's testimony he visited the premises for the first time, at which time he saw the remodeling which was going on upon the premises and made an immediate decision to purchase the same (R. 136a, 137a).

On the following day, October 4, 1962, a deed transferring title to this partially renovated farmhouse and the land upon which it stood was recorded transferring the property from Mr. Nix to Mr. Compton, at which time Mr. Compton paid Mr. Nix somewhere between $12,000 and $15,000 in cash (R. 40a, 133a).

Thereafter and about December 10 or 12 Mr. Compton opened his gambling house in Tipton County known as Twin Oaks upon the property which he had acquired from Mr. Nix. He commenced his operation with one crap table, but later in 1963 added roulette and black jack. His partners in this enterprise consisted of Mr. Charlie Keltner, Mr. Cham Daniel, Mr. Norris Nix and his brother, Mr. Henry Compton (R. 102a-103a, 129a-130a).

REASONS FOR GRANTING THE WRIT.

1. The Opinion of the Court of Appeals Is in Conflict With the Decision of Another Court of Appeals on the Same Matter.

We respectfully submit that the opinion of the Court of Appeals in the instant case is in square conflict with an opinion rendered by the Court of Appeals for the Fourth Circuit on February 3, 1966, in the case of **United States of America v. James Russell Hawthorne**, ... Fed. (2d) ....*

While the Government insists that the petitioner moved from Arkansas to Tennessee for the purpose of operating a gambling establishment in violation of the laws of Tennessee, and, in fact, did commence such an operation a little more than two months later, it conceded that the immediate purpose of the trip in interstate commerce on October 2, 1962, was to move his family from Arkansas to Tennessee. In fact, the Government concedes at page 4 of its brief in the Court of Appeals: "On October 2, 1962, the defendant and his family moved from Arkansas to the Argonne Street property (in Tennessee)" (Parenthesis added); and again on page 7 of its brief the Government states:

> "The single contested factual issue before this Court is whether or not Woodrow Wilson Compton possessed the state of mind which is required by 18 U. S. C. § 1952 on October 2, 1962, when he moved from West Memphis, Arkansas to Frayser, Tennessee."

Based upon these facts the Court of Appeals for the Sixth Circuit in affirming the conviction of the petitioner stated:

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* This opinion has not as yet been published but a copy of the opinion appears in the appendix hereof at p. 23.

"The questions presented to this Court are:

* * * * * * * *

"(2) Does 18 U. S. C., Section 1952, apply to one who changes his legal residence from one state to another with intent to establish an unlawful gambling business, and does, as a matter of fact, after changing his residence, so engage in the operation of a gambling establishment?

* * * * * * * *

"Addressing ourselves to question No. 2. Defendant relies on **Mortensen v. United States**, 322 U. S. 369 (1944), a case brought for violation of the Mann Act, to sustain his position that if one travels in interstate commerce for the purpose of moving his domicile that Section 1952 is not violated. We would agree with Defendant if the only reason was to accomplish a change of residence. However, the evidence in the present case shows clearly that Defendant changed his residence for reasons other than change of abode.

"No evidence whatsoever was presented in the **Mortensen** case that the defendants traveled with any purpose other than an innocent one. In the present case there is ample evidence to establish that Defendant's dominant intention for traveling to Tennessee was to continue his gambling activity, not to change his place of residence. The evidence clearly discloses a course of conduct by the Defendant to engage in a gambling enterprise. The actual change of his residence to another State was only incidental to the accomplishment of this purpose and thus falls within the purview of Title 18, U. S. C., Section 1952.

Opinion of Court of Appeals, pp. 3, 5; See Appendix pp. 21-22.

The facts presented to the Fourth Circuit Court in the **Hawthorne** case, *supra*, are almost identical to the facts

in the instant case except the facts in the **Hawthorne** case present a somewhat stronger case for conviction. Mr. Hawthorne went from his home in Indiana to West Virginia to determine the possibility of opening a supper club with gambling facilities. Later he made another trip to West Virginia to enter into a lease for the supper club with possession to be given on October 1, 1962. After the lease was entered into he ordered a mobile home to be delivered from Indiana to the premises of his supper club in White Sulphur Springs, in West Virginia, on October 2, 1962. On October 11 in preparation of moving his family he had two tanks of bottled gas connected up to the trailer. He was indicted under 18 U. S. C., § 1952, as a result of his trip in interstate commerce on October 11. Obviously the only reason Mr. Hawthorne had for moving his family from Indiana to the premises of his supper club in West Virginia was to be nearer his gambling establishment, and except for this unlawful enterprise he would never have moved. Nevertheless, the Court of Appeals for the Fourth Circuit reversed the conviction on this count of the indictment stating:

> "It is freely conceded by the government that the immediate purpose of this trip was to move Hawthorne's family from Indiana to the new home. Such a purpose is not sufficiently related to his gambling enterprise to bring it within the interdiction of the statute. We cannot hold that the purpose of that trip was to 'promote, manage, establish, carry on, or facilitate . . .' his unlawful enterprise within the meaning of the statute. The statute was intended to make interstate travel or transportation in aid of racketeering enterprises a crime.
>
> • • • • • • • •
>
> "We do not rest our decision on the fact that the first proven overt act of gambling did not occur until nearly five months after the trip in question. Other

trips Hawthorne took prior to that charged in count one of the indictment were directly related to this enterprise, but the connection with this specific trip is too tenuous."

See Opinion of **U. S. v. Hawthorne**, supra, Appendix, pp. 25-26.

We, therefore, respectfully submit that the holdings of the Sixth Circuit and those of the Fourth Circuit are in square conflict, and that this is, therefore, a case in which the writ of certiorari should be granted by this Honorable Court under Rule 19 in order that the conflict between these two circuits might be resolved.

2. The Issue Raised by the Petition for Certiorari Presents an Important Question of Federal Law Which Has Not Been, But Should Be, Settled by This Court.

The congressional enactment under which the petitioner was convicted has never been construed by the Supreme Court. The statute provides that:

"Whoever travels in interstate . . . commerce . . . with intent to—

* * * * * * *

"otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform any of the acts specified . . ., shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

"As used in this section 'unlawful activity' means (1) any business enterprise involving gambling . . ."

As stated, this statute has never been construed by this Court and this Court has, therefore, never determined whether or not under this language traveling in inter-

state commerce for a legitimate purpose, as for example to move one's domicile, even though an illegal activity may be contemplated as an incident to such interstate movement, falls within the prohibition of the Act.

The Court has heretofore granted certiorari in two cases involving very similar congressional language in the Mann Act (18 U. S. C., § 2421) and in the Immigration Act of 1917, and in both instances held that where the travel involved a legitimate purpose no conviction could be had even though an illegal act might also be contemplated.

The Mann Act (18 U. S. C., § 2421) provides:

> "Whoever knowingly transports in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, any woman or girl for the purpose of prostitution or debauchery of for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice;
>
> * * * * * * *
>
> "Shall be fined not more than $5,000 or imprisoned not more than five years, or both."

The Court considered this language in the case of **Mortensen v. U. S.**, 322 U. S. 369, 88 L. Ed. 1331, 64 S. Ct. 1037. In that case Mr. Mortensen and his wife operated a house of prostitution in Grand Island, Nebraska. They decided to take a trip to Salt Lake City, Utah, to visit Mrs. Mortensen's parents. Two of the Mortensen's prostitutes wanted to go with them on a vacation, to which Mr. and Mrs. Mortensen agreed. No prostitution was practiced on the trip, but Mr. and Mrs. Mortensen did return with the girls after the trip so that they might

continue to ply their wares in Nebraska. The Mortensens were indicted and convicted for violation of the Mann Act, but the Supreme Court reversed the convictions, stating:

> "The penalties of § 2 of the Act are directed at those who knowingly transport in interstate commerce 'any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery or to engage in any other immoral practice.' The statute thus aims to penalize only those who use interstate commerce with a view toward accomplishing the unlawful purposes. To constitute a violation of the Act, it is essential that the interstate transportation have for its object or be the means of effecting or facilitating the proscribed activities. Hansen v. Haff, 291 U. S. 559, 563, 78 L. ed. 968, 971, 54 S. Ct. 494. An intention that the women or girls shall engage in the conduct outlawed by § 2 must be found to exist before the conclusion of the interstate journey and must be the dominant motive of such interstate movement. And the transportation must be designed to bring about such results.
>
> • • • • • • • •
>
> "What Congress has outlawed by the Mann Act, however, is the use of interstate commerce as a calculated means for effectuating sexual immorality."
>
> 322 U. S. 373-375, 88 L. Ed. 1335.

In the case of **Hansen v. Haff**, 291 U. S. 559, 78 L. Ed. 968, 54 S. Ct. 494, the Court considered the following language contained in the Immigration Act of 1917:

> "That the following classes of aliens shall be excluded from admission into the United States: . . .

prostitutes, or persons coming into the United States for the purpose of prostitution or for any other immoral purpose."

The defendant, Inger J. Hansen, was a citizen of Denmark. She came to the United States in 1922 and was employed as a domestic servant. While thus employed and while living in Los Angeles she carried on an illicit relationship with a married man. In 1931, accompanied by her male friend, she returned to visit her parents in Denmark, while her co-adulterer attended a convention in Vienna. While on this trip the parties continued their illicit relationship at various points, both in Europe and in Canada. Upon their return to the United States they stopped off at a hotel in Seattle where they registered as man and wife, at which time she was arrested by the immigration authorities for deportation under the above statute. In reversing the order of deportation the Supreme Court held that while the evidence justified a finding that the defendant expected to continue her irregular and improper conduct:

> "The fact is that she was returning to her former residence . . . it has been held that transportation denounced (under the Mann Act) must have for its object or be a means of effecting or facilitating the sexual intercourse of the participants. If the purpose of the journey is not sexual intercourse, though that be contemplated, the statute is not violated" (Parenthesis added).
>
> 291 U. S. 562, 563, 78 L. Ed. 971.

28 U. S. C. § 1915 did not become the law of the land until 1961. While it is a statute of recent origin there have been a number of opinions by the lower courts interpreting its provisions. The Sixth Circuit has held in the case at bar that a conviction may be had even though the interstate movement is for the purpose of changing the

defendant's residence, if the defendant was planning at the time he traveled in interstate commerce to commence a gambling operation in the state of his new domicile. The Fourth Circuit Court has held in the **Hawthorne** case *supra* that even though an interstate movement is made with the intention of later promoting and operating a gambling house no conviction may stand if the immediate purpose of travel is to move the defendant's official residence from one state to another.

At least one district judge has questioned whether a violation of this Act might be committed if a professional gambler returned to the state in which he maintained his casino after going to a neighboring state for the sole purpose of playing golf. (See **U. S. v. Teemer**, 214 F. Supp. 952.)

We, therefore, respectfully submit that an important question of Federal law is thus presented which has not been but should be settled by this Court. This Court has determined what travel is prohibited in white slavery cases and in immigration case. It should do the same under the section herein involved for until it does even the lower courts in the Federal judiciary can not agree upon what acts violate the law and what acts do not. Until this Court passes on the question and in the absence of the lower courts being able to agree the statute as it is being construed is "so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application" **(Connally v. General Construction Co.**, 269 U. S. 385, 70 L. Ed. 322, 46 S. Ct. 126) and falls within the objection described by this Court in **U. S. v. Cardiff**, 344 U. S. 174, 97 L. Ed. 200, 73 S. Ct. 189 as follows:

> "The vice of vagueness in criminal statutes is the treachery they conceal either in determining what persons are included or what acts are prohibited.

Words which are vague and fluid . . . may be as much of a trap for the innocent as the ancient laws of Caligula."

CONCLUSION.

For the reasons stated, the petition for certiorari should be granted in order to permit this Court to resolve a conflict between two circuits and to resolve an important question of Federal law which has not been, but should be, settled by this Court.

Respectfully submitted,

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APPENDIX.

APPENDIX.

No. 16,295.

United States Court of Appeals
for the Sixth Circuit.

United States of America, Plaintiff-Appellee, v. Woodrow Wilson Compton, Defendant-Appellant.	Appeal from the District Court of the United States for the Western District of Tennessee, Western Division.

Decided February 4, 1966.

Before: Weick, Chief Judge, Celebrezze, Circuit Judge, and Cecil, Senior Circuit Judge.

Celebrezze, Circuit Judge. Woodrow Wilson Compton, hereinafter referred to as Defendant, was indicted in the Western District of Tennessee on three counts. Count 1 charged him with violation of Title 18, U.S.C., Section 1952; Count 2 with violation of Title 18, U.S.C., Sections 2 and 1952; and Count 3 also with violation of Title 18, Sections 2 and 1952. Count 2 was dismissed at the request of the Prosecuting Attorney. Defendant went on trial before a jury on Counts 1 and 3. Defendant appeals.

In the Spring of 1948, Defendant moved to West Memphis, Arkansas. For a short period during 1953 and 1954, he operated a sporting goods store. Later, he became part owner of a beauty shop. Since 1953 the Defendant has been in the gambling business. Sometime in 1960, he converted

a room attached to his house for use as a gambling area and equipped it with gambling devices necessary to operate a dice game. On May 26, 1962, Defendant's gambling establishment was raided by the West Memphis, Arkansas police who confiscated his gambling equipment. Following the raid, Defendant, while still a resident of West Memphis, Arkansas, frequented a gambling establishment in Tipton County, Tennessee. At this time Defendant learned that an acquaintance of his was being prosecuted for violation of Title 18, U.S.C., Section 1952. Sometime in August or September of 1962, Defendant consulted an attorney in Arkansas, inquiring of the attorney as to the provisions of Section 1952 relative to interstate travel to commit gambling. The attorney advised him that if Defendant made a bona fide change of residence not connected with an overt act in aid of an unlawful enterprise, he would not be in violation of the statute.

On September 11, 1962, one Norris Nix, a friend and gambling associate of Defendant, purchased a farm consisting of 45 acres, including a six-room dwelling in Tipton County, Tennessee, for $27,000. The attorney who handled the transaction testified that Defendant was present when the transaction was closed, although he was unable to identify Defendant at the trial. Nix began immediately thereafter to renovate the six-room dwelling.

On September 30, 1962, Defendant rented a house in Frayser, Tennessee, a suburb of Memphis, and about 15 miles from the property purchased by Nix. Defendant moved into the house on October 2, 1962. Next day, October 3, 1962, Defendant entered negotiations with Nix for the purchase of the farm and one day later, October 4, 1962, title to the farm was transferred to Defendant. The consideration for the farm was approximately the price that Nix had paid for the property, even though Nix had done some remodeling to the premises.

Defendant admits that he intended to convert the property to a gambling place. After title was transferred to Defendant, Nix and Defendant continued the remodeling. On or about December 10, 1962, Defendant and Nix, as partners, opened the farmhouse, later to be known as Twin Oaks Club, for public gambling.

Section 1952, Title 18, U. S. C., provides in pertinent parts, as follows:

> "(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—
>
> "(1) distribute the proceeds of any unlawful activity; or
>
> "(2) commit any crime of violence to further any unlawful activity; or
>
> "(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,
>
> and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2) and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.
>
> "(b) As used in this section 'unlawful activity' means (1) any business enterprise involving gambling, * * * in violation of the laws of the State in which they are committed or of the United States, * * *."

The questions presented to this Court are:

(1) Does the evidence support the jury's finding that Defendant possessed the necessary statutory intent at the time of his interstate travel to manage, establish, carry on, or facilitate a gambling business in violation of state law?

(2) Does 18 U. S. C., Section 1952, apply to one who changes his legal residence from one state to another with intent to establish an unlawful gambling business, and does, as a matter of fact, after changing his residence, so engage in the operation of a gambling establishment?

Addressing ourselves to the first question, we answer in the affirmative. The evidence presented to the jury was overwhelming that Defendant did possess the necessary intent required by Section 1952. By Defendant's own admission, he was a professional gambler for many years. After selling his sporting goods store in 1955 he continuously operated a gambling business, conducting a gambling establishment in his home and later expanding his gambling activity by converting a room attached to his home for use as a gambling area. He operated unmolested until a police raid of May, 1962. Thereafter he frequented a gambling casino in Tipton County, Tennessee, and later opened a gambling establishment in the same County in close proximity thereto. He consulted his attorney as to the effect of Section 1952 before moving to Tennessee. From the evidence the jury could find that Defendant participated in the acquisition of the Tennessee farm with Nix, before establishing a residence in Tennessee. The Defendant then acquired the property from Nix two days after moving to Tennessee with intent to convert it into a gambling place, and did so convert it and opened it to the public within a short period of several months. These were all established facts.

Intent as an element of an offense may be inferred from the established facts. **Wuichert v. United States**, 8 F. 2d 561 (C. A. 6, 1925). A jury must be allowed to draw inference of intent from proof of other objective facts and actions of the defendant. **Battjes v. United States**, 172 F. 2d 1 (C. A. 6, 1949).

The law is settled that evidence of a substantial course of illegal conduct, occurring a reasonable time before and

after an act of interstate travel, will allow a jury to infer that the travel was undertaken with the intent to carry on the unlawful activity. **United States v. Farber**, 336 F. 2d 586 (C. A. 6, 1964); **United States v. Sapperstein**, 312 F. 2d 694 (C. A. 4, 1963); **Brooks v. United States**, 309 F. 2d 580 (C. A. 10, 1962); **Flanagan v. United States**, 308 F. 2d 841 (C. A. 5, 1962), cert. denied 372 U. S. 838 (1963).

The appellate court in a criminal case must view the evidence in the light most favorable to the Government, accept all reasonable inferences drawable therefrom, and affirm if substantial evidence was presented from which a jury could convict. **Ramsey v. United States**, 248 F. 2d 740 (C. A. 6, 1957); **Dodson v. United States**, 215 F. 2d 196 (C. A. 6, 1954); **Henderson v. United States**, 202 F. 2d 400, 403 (C. A. 6, 1953), cert. denied 349 U. S. 920 (1955); **Battjes v. United States**, *supra*.

The undisputed facts and circumstances were sufficient for the jury to conclude that Defendant traveled with the requisite Section 1952 intent. The evidence as a whole justified this finding.

Addressing ourselves to question No. 2. Defendant relies on **Mortensen v. United States**, 322 U. S. 369 (1944), a case brought for violation of the Mann Act, to sustain his position that if one travels in interstate commerce for the purpose of moving his domicile that Section 1952 is not violated. We would agree with Defendant if the only reason was to accomplish a change of residence. However, the evidence in the present case shows clearly that Defendant changed his residence for reasons other than change of abode.

No evidence whatsoever was presented in the **Mortensen** case that the defendants traveled with any purpose other than an innocent one. In the present case there is ample evidence to establish that Defendant's dominant intention for traveling to Tennessee was to continue his

gambling activity, not to change his place of residence. The evidence clearly discloses a course of conduct by the Defendant to engage in a gambling enterprise. The actual change of his residence to another State was only incidental to the accomplishment of this purpose and thus falls within the purview of Title 18, U. S. C., Section 1952.

Judgment affirmed.

No. 16,295.

United States Court of Appeals
For the Sixth Circuit.

United States of America,
Plaintiff-Appellee,
vs.
Woodrow Wilson Compton,
Defendant-Appellant.
} Order.

Before: Weick, Chief Judge, Celebrezze, Circuit Judge, and Cecil, Senior Circuit Judge.

This matter is before the Court on Defendant-Appellant, Woodrow Wilson Compton's petition for rehearing and also the supplemental memorandum calling the Court's attention to the decision of the Fourth Circuit Court of Appeals in the case of United States of America v. James Russell Hawthorne, decided February 3, 1966.

Upon consideration it is Ordered that the petition of Defendant-Appellant, Woodrow Wilson Compton, for reconsideration of this Court's Order affirming the judgment of the District Court, be, and it is, hereby overruled.

Entered by Order of the Court,

CARL W. REUSS,
Clerk.

United States Court of Appeals
For the Fourth Circuit.

No. 9,817.

United States of America, Appellee,

versus

James Russell Hawthorne, Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Beckley. John A. Field, District Judge.

(Argued December 9, 1965. Decided February 3, 1966.)

Before Haynsworth, Chief Judge, and Sobeloff and J. Spencer Bell, Circuit Judges.

Arnold M. Weiner and Sanford Jay Rosen (Court-assigned counsel) for Appellant, and Alfred N. King, Attorney, Department of Justice (Milton J. Ferguson, United States Attorney, on brief) for Appellee.

J. Spencer Bell, Circuit Judge:

The defendant, James Russell Hawthorne, was convicted by a jury of two charges of use of interstate facilities to promote illegal gambling enterprises and sentenced to concurrent five year terms of imprisonment.[1] The first count

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[1] 18 U. S. C. A., Section 1952, provides:

"(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not

involved a trip made by the defendant on or about October 11, 1962, from Indiana to West Virginia. The second count involved the use of the facilities of Western Union to transfer $235.00, proceeds from several slot machines owned by the defendant and operated by his partner in Indiana, from that state to the defendant in West Virginia.

The evidence considered favorably to the government showed that early in 1962 the defendant went from his home in Indiana to Greenbrier County, West Virginia, where he investigated the possibility of opening a supper club which would provide gambling facilities to its patrons, in violation of the local law.[2] He discovered that one of the existing establishments could be rented and by June had proceeded as far as to discuss the possibility of renting paraphernalia with one of the government witnesses. In

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more than $10,000 or imprisoned for not more than five years, or both.

(b) As used in this section 'unlawful activity' means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics, or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion or bribery in violation of the laws of the State in which committed or of the United States.

(c) Investigations of violations under this section involving liquor or narcotics shall be conducted under the supervision of the Secretary of the Treasury."

[2] The West Virginia statute:

"Any person who shall keep or exhibit a gaming table, commonly called A. B. C. or E. O. table, or faro bank, or keno table, or any other gaming table or device of like kind, under any denomination, or which has no name, whether the game, table, bank or device be played with cards, dice or otherwise, or shall be a partner, or concerned in interest, in keeping or exhibiting such table, bank or gaming device of any character, shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not less than two nor more than twelve months and be fined not less than one hundred nor more than one thousand dollars. . .." West Virginia Code of 1961, Chap. 61, Art. 10, § 1.

early summer Hawthorne returned to West Virginia and made further arrangements for operating his business. He had a corporation set up and entered into a six year lease beginning October 1, 1962. He then returned to Indiana in order to move his family to West Virginia. On October 2, 1962, Hawthorne and his wife purchased a mobile home in Elkhart, Indiana, for delivery to the premises of his supper club at White Sulphur Springs, West Virginia. On October 11th two tanks of bottled gas were connected up to the trailer. It was this trip which occurred on or about the 11th of October which was charged in the first count of the indictment.

It is freely conceded by the government that the immediate purpose of this trip was to move Hawthorne's family from Indiana to the new home. Such a purpose is not sufficiently related to his gambling enterprise to bring it within the interdiction of the statute. We cannot hold that the purpose of that trip was to "promote, manage, establish, carry on, or facilitate . . ." his unlawful enterprise within the meaning of the statute. The statute was intended to make interstate travel or transportation in aid of racketeering enterprises a crime.[3]

It is not the intent of the statute to make it a crime per se for one who operates a gambling establishment to travel interstate. To so hold might raise serious questions of the constitutionality of the Act. See **Twining v. New Jersey**, 211 U. S. 78, 97 (1908); **Kent v. Dulles**, 357 U. S. 116 (1958); **Zemel v. Rusk**, 381 U. S. 1 (1965). The government cites no case which supports its position. **Masse v. United States**, 210 F. 2d 418 (5 Cir. 1954), *cert. denied*, 347 U. S. 962, a Mann Act case, is not in point. While there it is true the court found that Masse was guilty even though his im-

[3] See generally: Senate Judiciary Committee Hearings, The Attorney General's Program to Curb Organized Crime and Racketeering, 87th Cong., 1st Sess. (1961).

moral conduct was not the sole purpose of his trip (he also travelled to get a divorce) the substantive offense in the Mann Act is the transportation of the female, not the interstate travel of the transporter himself. **United States v. Sapperstein,** 312 U. S. 694 (4 Cir. 1963); **Williams v. United States,** 271 F. 2d 703 (4 Cir. 1959). In the instant case, however, the essential element of the crime is the interstate travel of the offender himself. We do not rest our decision on the fact that the first proven overt act of gambling did not occur until nearly five months after the trip in question. Other trips Hawthorne took prior to that charged in count one of the indictment were directly related to his enterprise, but the connection with this specific trip is too tenuous. **Cf. Parr v. United States,** 363 U. S. 370 (1960).

We think the defendant was properly convicted under the second count. We do not think the statute (18 U. S. C. A., § 1952) requires proof that the defendant knew that he was violating the Indiana law by operating slot machines in that state, although there was evidence from which the jury could have so found. Such knowledge was not required to convict under the Indiana statute. **Worl v. State,** 243 Ind. 116, 183 N. E. 2d 594 (Sup. Ct. 1962), and we think it sufficient under section 1952 that the defendant knowingly caused to be transmitted interstate by the Western Union money order proceeds of a gambling enterprise which was unlawful under the Indiana statute. Since we have held that the conduct charged in the first count did not violate the statute in question, we remand the case to the district court in order that the judge may reconsider the sentence given on the second count in the light of this opinion.

Reversed and Remanded.

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1191

WOODROW WILSON COMPTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 17–22) is reported at 355 F. 2d 872.

JURISDICTION

The judgment of the court of appeals was entered on February 4, 1966, and a petition for rehearing was denied on March 10, 1966. The petition for a writ of certiorari was filed on April 6, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether interstate travel with intent to promote and establish an illegal gambling enterprise is punishable under 18 U.S.C. 1952 when the travel consists of moving one's residence to a different State in order to operate a previously chosen establishment.

216-496—66

STATUTE INVOLVED

18 U.S.C. 1952 (75 Stat. 498) provides in pertinent part:

> (a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—
>
> (1) distribute the proceeds of any unlawful activity; or
>
> (2) commit any crime of violence to further any unlawful activity; or
>
> (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,
>
> and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.
>
> (b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling * * * offenses in violation of the laws of the State in which they are committed or of the United States. * * *

STATEMENT

After a jury trial in the United States District Court for the Western District of Tennessee, petitioner was convicted of traveling in interstate commerce with intent to establish an illegal gambling

enterprise, in violation of 18 U.S.C. 1952.[1] He was fined five thousand dollars and sentenced to a five-year term of imprisonment (App. 7a).[2]

The evidence shows that from 1953 to May 26, 1962, petitioner ran a large-scale dice game at his home in West Memphis, Arkansas (App. 84a, 85a; G. 1b, 2b). On the latter date, his gambling room was raided by the West Memphis police (App. 85a-86a), resulting in a great deal of newspaper publicity which—according to petitioner—embarrassed his family. Petitioner testified that he then considered leaving West Memphis (App. 86a, 87a, 108a), and that during the summer of 1962 he visited gambling establishments in Tipton County, Tennessee[3] (App. 116a). Since, however, an acquaintance of his had been prosecuted in a federal court for interstate activities relating to gambling (App. 114a), petitioner, before moving, consulted his attorney, who advised him that a *bona fide* change of residence, unconnected with any overt act of gambling, would not violate federal law (App. 138a, 139a).

In August or early September 1962, a long-time gambling associate and friend of petitioner (one Nix) began to negotiate for the purchase of a farm located

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[1] Petitioner was charged on two other counts involving inducing others to travel in interstate commerce for gambling purposes. One count was dismissed on the government's motion, and petitioner was acquitted on the other.

[2] "App." refers to petitioner's appendix in the court of appeals and "G." to the government's appendix in that court. Both are on file with the Clerk of this Court.

[3] Tipton County is adjacent to Shelby County, which includes Memphis, Tennessee.

about 300 yards from a gambling establishment in Tipton County which petitioner had visited (G. 4b, 5b). Nix purchased the farm and a six-room dwelling house on September 11, 1962, for $27,000 (G. 5b); the attorney who handled the transaction testified that he was introduced to a "Mr. Compton" at the closing (App. 43a). Nix began to renovate the farmhouse, and, on October 4, 1962, after a view of the property and a single day's negotiations, petitioner purchased it from Nix for the same price Nix had paid (App. 40a, 134a, 136a; G. Ex. 12). Further renovated, this farmhouse became the Twin Oaks Club, which, petitioner testified, he, Nix and other partners operated as a gambling-house (App. 130a); public gambling commenced in early December 1962 (App. 103a, 130a).

Petitioner and his wife testified that the entire family moved from West Memphis, Arkansas, to Memphis, Tennessee, on October 2, 1962 (App. 84a, 90a, 163a, 167a); utility companies' records verified this date (App. 11a, 16a, 30a, 160a). It was this travel that formed the basis of petitioner's conviction.[4]

[4] To be sure, the indictment charges interstate travel only on December 12, 1962. Although there was testimony that petitioner returned to West Memphis on that day with movers to pick up some furniture that had been left in his former residence (App. 54a–59a), the case was tried and the appeal argued by all parties on the basis that the October 2 trip was the one at issue. There was no objection at trial (or on appeal) predicated on the differing dates. Nor does petitioner raise the point in this Court. Since both petitioner and the government assumed that the date in the indictment was October 2, 1962, there cannot have been any prejudice to petitioner as a result of the variance.

ARGUMENT

1. Petitioner argues that interstate travel for the purpose of changing one's domicile cannot be the basis for a conviction under 18 U.S.C. 1952 (which, among other things, punishes interstate travel with intent to establish an illegal gambling enterprise), even if the establishment of such an enterprise is, as he concedes was the case here, also contemplated (Pet. 5, 10–14). However this may be, the evidence in the present case shows far more—that petitioner first decided to move his gambling business and only then, because of that decision, moved his family; so, at least, the jury could find. This is thus not a case where a gambler changes the State of his domicile for other reasons, and, incidentally, moves his gambling business as well. It was only after petitioner's admitted gambling partner had purchased and begun to remodel the property for use as a gambling casino that petitioner moved his family. Considering the advice that petitioner had obtained from his attorney, and the fact that immediately after the move the partner transferred the property to petitioner, the jury was entitled to conclude that petitioner—who was apparently present at the closing—was the real party in interest when the Tennessee property was purchased in September, and that, therefore, petitioner's dominant intent in moving to Tennessee was to continue his gambling activity rather than to change his abode (see Pet. App. 21–22).

The statute only reaches interstate travel with intent to establish unlawful gambling, but it does not require that the unlawful enterprise be the only purpose of the travel. The rule that the illegal purpose need be only one of the purposes of the proscribed travel is well established in Mann Act cases,[5] and it is, we submit, equally applicable here.[6]

2. Petitioner argues that the decision below is in conflict with *United States* v. *Hawthorne*, 356 F. 2d 740 (C.A. 4) (Pet. App. 23–26). The court in that case (while not strictly required to reach the issue because it affirmed the conviction on another count on which a concurrent sentence had been imposed) held that interstate travel by the operator of a gambling establishment when he moved his family was not within the statute because the purpose of the trip was "not sufficiently related to his gambling enterprise to bring it within the interdiction of the statute" (Pet. App. 25). There, however, the trip came only after petitioner, through a corporation, had leased the property to which he

[5] See, *e. g.*, *Daigle* v. *United States*, 181 F. 2d 311, 314 (C.A. 1); *Dingess* v. *United States*, 315 F. 2d 238, 240 (C.A. 4), petition for certiorari dismissed, 373 U.S. 947; *Dunn* v. *United States*, 318 F. 2d 89, 92 (C.A. 5); *Reamer* v. *United States*, 318 F. 2d 43, 49 (C.A. 8), certiorari denied, 375 U.S. 869; *DeVault* v. *United States*, 338 F. 2d 170 (C.A. 10).

[6] This case cannot be likened to *Mortensen* v. *United States*, 322 U.S. 369, where the defendants, who ran a house of prostitution, took a vacation trip with some of the women who worked for them and the only transportation charged in the indictment was the return part of the vacation trip. If the defendants there had moved their entire operation to another State, they clearly would have violated the Mann Act.

moved and on which he later established his gambling enterprise, and had made other trips to the property. The court of appeals agreed that the other trips, which Hawthorne had taken "prior to that charged in count one of the indictment were directly related to his enterprise, but the connection with this specific trip is too tenuous" (Pet. App. 26).

The trip here, in contrast, though it, too, involved moving the family, was comparable to the "other trips" to which the *Hawthorne* court referred; it was "directly related" to the gambling enterprise. The evidence shows that, immediately after having made the move on October 2, 1962, petitioner, on October 4, took open title to the property that he had previously taken in the name of a nominee. The October 2 trip was thus critical to the establishment of the unlawful gambling activity. Since petitioner was traveling from Arkansas to Tennessee for reasons of gambling, he was properly found to have violated 18 U.S.C. 1952.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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